

Serial No.: 09/646,811

Atty. Docket: BATG-5

Title: An Automated Cigarette Maker and Component Assemblies

### REMARKS

Reconsideration of the pending application is respectfully requested. After entry of the enclosed amendment, claims 10-15, 26-42, and 44-53 remain in the pending application. Please cancel claim 43. Claim 53 has been added in the instant amendment.

### Drawings

The Examiner has objected to the drawings as failing to comply with 37 CFR 1.84(p)(5) as including reference signs not mentioned in the description. Specifically, the Examiner cites element 22 in Figure 1 and element 166 in Figure 5. However, element 22 is a panel and is described in the specification on page 13, line 16. In addition, element 166 is a spring and is described in the specification on page 18, line 5. Since these elements are mentioned in the description, Applicant's attorney respectfully requests the Examiner remove this ground of rejection.

### Claim Objections

The Examiner has objected to Claim 38 for use of the word "catchment". At [www.dictionary.com](http://www.dictionary.com) the term catchment is defined as:

**catch·ment** *n.*

1. A catching or collecting of water, especially rainwater.

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2. a. A structure, such as a basin or reservoir, used for collecting or draining water.
- b. The amount of water collected in such structure.
3. A catchment area.

As clearly outlined in the specification, the catchment receptacle is used for tobacco remnants. Applicant's attorney claims the catchment vessel as a drawer for collection of tobacco material. Applicant's attorney fails understand this objection and respectfully requests further explanation from the Examiner if this citation from the online dictionary and specification fails to persuade the Examiner that a catchment maybe used to collect tobacco.

**35 U.S.C. § 112 Rejection of Claims 10-15 and 26-52**

The Examiner has rejected claims 10-15 and 26-52 under 35 U.S.C. § 112, first paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant's attorney respectfully traverses this ground of rejection.

The Examiner alleges that a cigarette maker should include means to enclose a tobacco with a wrapper. However, the application describes and claims throughout a tube hopper housing a plurality of rolled cigarette tubes, as well as a toothed blade urging

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tobacco into the cigarette tube. For example, pending claim 29 claims a tappet, for shuttling in and out of a chamber containing a tobacco plug. Concerning the wrapper, claim 37 for example, claims a tube hopper wherein a plurality of pre-formed cigarette tubes are positioned as described throughout the specification. Thus, a tobacco plug is urged into a preformed cigarette tube thereby removing the need for a specific description of a roller. Applicant's attorney respectfully requests this ground of rejection withdrawn.

The Examiner has also rejected the preamble of the claims as stating "a do-it-yourself cigarette maker" under 35 U.S.C. §112, first paragraph. Applicant's attorney believes that due to translational difficulties, the invention has not been described appropriately. Applicant's attorney thanks the Examiner for bringing attention to this error.

Applicant's attorney has amended the Title of the Application and preamble of the claims to state "An Automated Cigarette Maker". Applicant's attorney believes this accurately describes the instant invention and overcomes the translational difficulties of the previous title and claims. Applicant's attorney respectfully requests this ground of rejection withdrawn.

**35 U.S.C. § 112 Rejection of Claims 43 and 47-52**

The Examiner has rejected claims 43 and 47-52 under 35 U.S.C. §112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make or use the invention. The Examiner

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alleges that changing the dependency of claims 47 and 52 created claims having duplicated parts not supported by the specification.

Concerning claims 47-52, Applicant's attorney has amended claims 47 and 52 to remove the duplicated elements. Applicant's attorney respectfully requests this ground of rejection withdrawn.

Concerning claim 43, Applicant's attorney has canceled the rejected claim and respectfully requests this ground of rejection withdrawn.

**35 U.S.C. § 112 Rejection of Claims 13 and 37**

The Examiner has rejected claims 13 and 37 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner alleges that claim 13 lacks antecedent basis and the Examiner is confused by the language of claim 37. Applicant's attorney has amended claims 13 and 37 rendering said rejection moot. Applicant's attorney respectfully requests this ground of rejection withdrawn.

**35 U.S.C. § 112 Rejection of Claims 10-15 and 26-52**

The Examiner has rejected claims 10-15 and 26-52 under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting essentials. The Examiner alleges that the omitted essentials are means for wrapping a cigarette. However, as previously described,

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the instant application describes a tube hopper containing a plurality of cigarette tubes. Tobacco in the tobacco compression mechanism is urged into the cigarette tubes using a tobacco rod conveyor having a toothed blade. Thus a means for wrapping a cigarette is not claimed and is not essential to the instant invention. Applicant's attorney respectfully requests that the Examiner remove this ground of rejection.

The Examiner has rejected claim 12, stating that no function is specified by the words preceding "means". Applicant's attorney has deleted the word "means" to more clearly define the structure recited. Applicant's attorney respectfully requests this ground of rejection be withdrawn.

**35 U.S.C. § 103(a) Rejection of Claims 10-11, 14 and 27**

The Examiner has rejected claims 10-11, 14, and 27 under 35 U.S.C. 103(a) as being obvious over U.S. Patent 4,572,216, issued to Josuttis in view of U.S. Patent 4,164,229, issued to Hurt. Applicant's attorney respectfully traverses this ground of rejection.

The Examiner alleges that Josuttis discloses a cigarette maker having a funnel shaped infeed section, hopper 1' and a singling plucking roller having pins 8. The Examiner further alleges that Josuttis is silent with respect to a pivot wall section but that Hurt discloses placing a top wall section 16 on a hopper in order to preserve the moisture of tobacco in the hopper. Thus, the Examiner further alleges that at the time the invention

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was made it would have been obvious to a person of ordinary skill in the art to provide a top wall section being pivotally mounted in order to readily open and close Josuttis' feed hopper in order to preserve tobacco moisture as taught by Hurt.

MPEP 2142 states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Examiner's cited references fail to teach or suggest all of the claim limitations of the instant application. Josuttis teaches an apparatus for filling cigarette papers with tobacco. The disclosed device comprises a hopper for receiving and dispensing tobacco to a tobacco supply chamber, and a moveable forming and centering part which directs the tobacco from the tobacco supply chamber into a preformed cigarette tube. Hurt teaches a portable cigarette making machine. The portable cigarette machine comprises a hopper having a top or cover adapted to hold shredded tobacco. The cover functions to keep the tobacco clean and retain moisture therein during manufacture. The Examiner alleges that it would have been obvious to provide a hinge to the cover of Hurt and the invention of Josuttis in order to open and close the feed hopper.

To the contrary, as currently amended the instant application claims a pivot

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mounted **side-wall** of the infeed section rather than a pivot mounted top wall. The pivot mounted **side-wall** of the instant invention is structurally different from the Examiner's cited combination and functionally differs. The instant invention teaches a **side-wall** which is pivot mounted and may be tilted away or pivoted outward in order to clear tobacco from the infeed section. For example, such a structure allows removal of tobacco if the plucking roller becomes stuck from excessive tobacco between the funnel inner wall and the plucking roller. Additionally, the pivot mounted sidewall allows cleaning downward after use of the machine.

With respect to the Examiner's rejection, the cited combination fails to teach the instant invention as presently claimed. The cited combination fails to teach or suggest a device having a pivoting sidewall section. In addition, the pivoting sidewall section allows function not taught or suggested by the cited prior art. The cited combination fails to teach a device having the functionality to allow cleaning as the instant invention does. Moreover, the invention taught by Hurt teaches a device for retaining moisture in the tobacco being used in a cigarette which is completely unrelated to Applicant's instant invention.

Since Applicant's attorney asserts that the Examiner's cited references fails to teach or suggest every element of independent claim 10 of the instant invention, the cited combination of Josuttis in view of Hurt fails to render the currently claimed invention obvious and Applicant's attorney respectfully requests this ground of rejection be

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withdrawn. In addition, claims 11, 14, and 27 depend from claim 10 and therefore include all of the limitations of the independent claim. Since claim 10 is believed to be in condition for allowance, Applicant's attorney asserts that the cited dependent claims are believed to be allowable and respectfully requests this ground of rejection be withdrawn.

**35 U.S.C. § 103(a) Rejection of Claims 13, 15, and 26**

The Examiner has rejected claims 13, 15, and 26 under 35 U.S.C. § 103(a) as being obvious over Josuttis in view of Hurt and further in view of U.S. Patent 3,786,818, issued to Johnson. Applicant's attorney has amended claim 10 rendering this ground of rejection moot.

As previously discussed, claim 10 has been amended and is believed to be allowable. As currently claimed, claim 10 states a side-wall section of said infeed section is pivot-mounted. The Josuttis reference fails to teach or suggest a pivotable side-wall section of an infeed section or hopper on a cigarette making machine. In addition Hurt, which teaches a cover for a hopper, also fails to teach or suggest a pivotable side-wall section. The combination of Josuttis and Hurt fails to teach the presently claimed invention. Johnson fails to aid in this lack of teaching. Instead, Johnson teaches an apparatus for turgor conditioning tobacco rather than a cigarette maker and therefore Applicant's attorney questions the applicability of this cited reference in making this rejection. Nevertheless, the Johnson apparatus comprises a sealable container having



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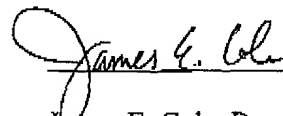
evacuating means and pressurizing means, conveyor means, sequencing timers, and liquid supply means. However, Johnson fails to teach a pivoting sidewall section for a tobacco infeed section or hopper as in Applicant's instant invention. As such, claims 13, 15, and 26, which depend from claim 10, are believed to be in condition for allowance and Applicant's attorney respectfully requests this ground of rejection withdrawn.

### Conclusion

Applicant's attorney assert that the instant application is in condition for allowance. Applicant's attorney therefore respectfully request that the Examiner allow the pending claims. However, if the Examiner believes there are other unresolved issues in this case, Applicant's attorney of record would appreciate a call at (502) 584-1135.

Respectfully submitted,

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